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**Comments on CC Docket 02-6**

**In the Matter of Schools and Libraries Support Mechanism**

**Prepared by:**

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**On issues arising once discounts have been committed (paragraph 6):**

We feel that members of rural communities should be able to use excess capacity AFTER HOURS. A real-world example involving an Excaliber client in rural Michigan; if the school district is closed at 4PM, all of the Internet access that school district has is sitting idle until the next morning. This rural community has NO access to broadband and limited access to modem-based ISPs. It would be of great service to this community to be able to have access to high-speed Internet access so long as the access to this Internet service doesn't in any way interfere with the students or faculty who use this access during the course of the day, thus our 4 PM example.

Otherwise stated – Products and Services that are discounted by the Universal Service mechanism could promote wider benefits to more people by using the excess available capacity that lies idle in off hours. It is our opinion that this idle capacity is otherwise wasted.

**On the appeals process, enforcement tools, unused funds: (paragraph 7):**

It would be extremely useful to extend the time limit for appeals to 60 days.

Using the criteria supplied in this docket as to the qualifications to be considered a small entity, Excaliber unquestionably qualifies. An independent audit would be extremely damaging to small companies such as Excaliber. Naturally, enforcement of program rules cannot be relaxed in any way, but must also be balanced to not unfairly punish a provider or a recipient because of a suspected wrongdoing. It would be unjust for an audit to be conducted, at the provider's expense, which would ultimately show that no wrongdoing was committed. A vendor could conceivably incur a tremendous amount of professional expenses for Certified Public Accountants and/or attorneys to conduct such an audit. Such expenses could conceivably break a small entity. While the provider can sleep easy at night knowing their good name is clear, it's of no comfort to a small company that was driven to bankruptcy by extensive professional expenses incurred in the process of the audit.

Waste of precious funds, which are more limited than ever given the E-rate allocations for year 5, should be severely punished. If a school district doesn't go forward and file its proper paperwork and apply the discounts they have been awarded, that school district should be disqualified from receiving any E-Rate discounts in the subsequent year. It is our opinion that the same penalty hold true for service providers who are negligent in filing their paperwork in a proper and timely manner. Both applicants and service providers need to cultivate a greater respect for the limited resources available in the E-Rate program and must be prepared to take responsibility for diminishing the abilities for OTHER applicants and service providers who will happily comply with the program and fully utilize discounts that are provided.

**On determining eligibility of products and services (paragraph 14):**

We strongly agree with the proposal of a computerized eligibility list with one very important caveat. Any such list must be COMPREHENSIVE and SWEEPING. If this is not the case then a company's products and/or services could conceivably be branded as ineligible only because that otherwise eligible product or service is simply not included in the list.

**Example:** Cisco makes an extensive array of products. If a Cisco 1005 Router (now out-of-production and discontinued) is NOT included on the list yet an ISP has an abundant inventory of this old router, then funding would be denied on an otherwise eligible product only because it didn't make the list. Extending this example further – If a Lucent Pipeline 130 router (not terribly popular but eligible by today's standards) is not included on the eligibility list only because it is not well-known, then a fine Lucent product is automatically ineligible for no good reason.

**More examples:** An AT&T leased line T-1 appears on the computerized eligibility list yet an Excaliber leased line T-1 doesn't make that list. As is commonly known, leased-line T-1s are eligible telecommunication services forming the basis of a WAN. Any participating school or library that applies for E-Rate discounts on an Excaliber private line T-1 would have their application denied only because this otherwise eligible service didn't make the list.

It is our opinion that any such list NOT indicate a specific brand or model number but SHOULD list the product or service as generically as possible. Using the above examples – Routers should ALWAYS appear on the list as well as leased-line T-1s independent of a specific corporate brand or model number.

Further, there should be an option to select an "Other" category then manually enter the product or service the applicant is seeking discounts for. No list, no matter how well it is maintained or how often it is updated, can be all-encompassing. It would be critical that the applicant have the option to enter their application items in a "free form" fashion then let SLD staff perform the traditional reviews for meeting eligibility requirements.

As for products that COULD be used for ineligible purposes (such as an eligible Cisco 3640 router with optional and ineligible digital modem cards) the applicant should be required to certify that the entire application and all components and parts within it are 100% compliant with E-Rate eligibility rules.

We agree that a computerized list would indeed simplify and streamline the application process. But it is very important that this list be judiciously composed of all eligible products and services in such a manner as to neither favor nor exclude any one company's products and or services as well as allow room for "write-in candidates" of eligible products and services that may not appear on the list.

**On Wide Area Networks (paragraph 16):**

We agree with the Commission's policy as-is and feel there is no reason for it to be changed.

**On Wide Area Networks (paragraphs 18, 19, 20):**

It is our opinion that the Commission's current position on WANs is the most efficient use of program funds. Telecommunication companies such as Excaliber must earn their revenue by insuring maximum "uptime". Since telecommunication companies have a vested interest as well as an ongoing responsibility to keep WANs operating, all other aspects of a funding decision are preserved. If a WAN fails in a building then all of the connections between those buildings fail. In a hub-and-spoke network design, a WAN failure could lead to a complete disruption of telephone and/or Internet service. Such disruptions would be wasteful in the aggregate. It would be inefficient for program funds to pay for a WAN that is not properly and persistently maintained.

With regard to the three-year capitalization policy, we agree that this method is most equitable in distributing high non-recurring costs over an extended period thereby allowing more applicants to avail themselves of E-Rate funds in each given year.

**On the enforcement of BEAR payments (paragraph 35):**

We agree that there should be stiff fines and penalties for a service provider that is slow to reimburse an applicant after the ten day period (or perhaps twenty days, as proposed elsewhere in the docket). Depending upon the severity of the lapse (sheer carelessness vs. intentional delay, 1 day late vs. 3 months late), penalties should be applied accordingly.

**20 Day Burden to Small Entities (paragraph 36):**

As a small entity, Excaliber can comfortably say there is NO BURDEN to a provider of any size in remitting funds to an applicant within the 20 day period. As payments received by a provider under BEAR are a pure pass-through, there is NO EFFECT on the provider's business one way or the other. Similarly, with the usual atmosphere surrounding the budgets and cash flows of most schools, school districts and libraries, the proposed 20 day period should not impact them at all either.

The benefit to extending the time from 10 days to 20 days is actually a bit of a relief to a provider that has the burden of compliance within the proper time frame. If anything, a smaller provider will benefit by an elimination of negative impact on cash outflows.

**Example:** Excaliber receives a $10,000 check paid on a BEAR form by an applicant. To insure compliance with the ten day period, we immediately write a check to the customer for $10,000. Our check clears the bank before the USAC check clears. We now have a negative-cash flow situation. This problem is compounded exponentially if more applicants choose to adopt the BEAR method. A twenty day period would eliminate the potential negative impact. The provider could receive the BEAR check, wait ten days to

insure it has cleared the bank, and then issue the check to the customer with a ZERO impact on operational cash flow.

**Equipment Transferability (paragraphs 38, 39, and 40):**

With the outline of paragraph 38 we feel that such continual transfers of equipment are wasteful of program funds on a yearly or almost-yearly basis. Such transfers also undermine the very concept of eligibility where entities are concerned when transferring equipment from an eligible school to an ineligible one.

We agree with the premise given in paragraph 38 that an applicant make significant use of the discounted equipment received before seeking discounts on more new equipment. We agree with the proposed rule in paragraph 39 with the three-year limitation on transfers. As technology does become outdated at a rapid rate, the three year period is quite feasible. Going further, we agree with substantially everything proposed in paragraph 39.

With regard to paragraph 40, we conditionally disagree with the proposal to deny internal connections to an entity that has already received discounts for internal connections within a given timeframe. We agree that there should be no DUPLICATION of funding (e.g. approving discounts for wiring for rooms already wired) but entities should not be restricted from applying for or receiving additional discounts for additional work.

In the case of schools where enrollments typically increase year after year, more enrolled students means more classrooms. More classrooms that are created are classrooms that need to be wired. Further, entities with ongoing multi-year technology plans would be unable to complete these plans if, for example, they received discounts for wiring in year 5, then don't qualify in year 6, then qualify again in year 7. The beneficiaries of these technology plans (students or library patrons) would not be best served by accessing a network that is partially complete and in a constant state of implementation.

In the case of an entity with a 5 year technology plan, an alternate-year approach in funding commitments would see this 5 year plan turn into a 10 year fiasco. By completion of the project in year 10, the wiring done in year 1 might either be obsolete or failing due to age and so the cycle begins again…

**On Independent Audits (paragraphs 58, 59):**

We will avoid being redundant and merely summarize our position on independent audits as mentioned on page two above:

**Independent audits can put small companies out of business because of the excessive amounts of expenses a small company would be forced to incur to defend itself during an audit. These expenses would be generated by the professional fees charged by Certified Public Accountants and/or attorneys on an hourly basis.**

**Some very small companies might not be able to afford the luxury of professional representation at all thereby dooming them to an audit they are ill-equipped and ill-prepared to conduct on their own.**

At the same time we firmly believe that all participants in the program must abide by and comply with all program rules. We also believe that enforcement of these rules is required to insure compliance. Without enforcement, rules become meaningless and empty words.

**Alternatives:**

A viable and much less punishing alternative to an independent audit are simply sterner investigative methods to stop and prevent fraud and/or waste; if the SLD has reason to believe an infraction of waste or fraud is being committed, then asking for specific, verifiable information by the suspected perpetrator would be in order.

**Example 1:** The ABC Wiring Corporation of Albany, New York is suspected of fraud due to several complaints made to the SLD by several schools in the greater Albany area. Specifically, the ABC Wiring Corporation is accused of invoicing and collecting USAC funds and schools' funds without providing the products and services paid for. It would be entirely appropriate for the SLD to require the ABC Wiring Corporation to submit to the SLD copies of its credentials including Certificates of Incorporation and Good Standing as well as any required state licensing to perform such work in the State of New York. In addition, evidence of work performed by ABC Wiring Corporation must be presented (copies of cancelled checks issued to wiring and equipment suppliers, job tickets outlining work performed, how much time spent performing, etc.) as well as photographic "before and after" evidence showing that work has indeed been performed.

**Example 2:** The SLD has reason to believe that the Cactus Patch School District of Sandy Ground, Arizona is in collusion with a wiring company. Specifically, it is suspected that the school district is falsifying BEAR forms and submitting them for payment. The provider is onboard since BEAR forms require authorized vendor signature.

The SLD could require evidence of payment (such as copies of cancelled checks made payable to this vendor) before paying BEAR forms, thereby proving that payments were indeed made to this vendor and the BEAR form is properly and accurately prepared. Waste and fraud with BEAR forms would be 100% eliminated by this measure.

**Example 3:** Excaliber Internet Corp. is providing a fractional T-3 Internet connection to a medium-sized school district in suburban New Jersey. The SLD believes the T-3 connection is a waste of program funds given the relatively small size of the school district and the relatively large size of the Internet connection. The SLD requests copies of Excaliber's traffic reports and bandwidth utilization reports for this T-3 circuit for a specified period of time. Upon review of these reports, it is shown that the T-3 circuit is

94% utilized during peak times. With 94% utilization all concerns of waste are dismissed by factual presentation of the evidence.

It needs to be said that in all of the above examples the SLD has access to sufficient information necessary to draw a conclusion without the need to conduct exhaustive and expensive audits.

**Prohibitions on Participation (paragraphs 60, 61, 62):**

It is our opinion that prohibition on participation is an excellent remedy to incorrigible applicants and providers who, time and time again, have proven that they do not/will not/cannot abide by the rules of the program.

The very existence of this prohibition would be an excellent deterrent to waste and fraud all by itself. Adoption of such a policy would insure almost angelic behavior by substantially all participants in the program.

We believe, though, that this should be a very strong measure reserved for applicants or providers that have persistently shown over time that they are willfully and intentionally committing breaches of program rules. We feel that a "three strikes and you're out" approach is best.

On the third proven, verified occurrence of waste/fraud/abuse etc, the guilty party should be suspended from participating in the E-Rate program for the next funding year. In the year FOLLOWING their suspension from the program they should be on probation with extra-fine scrutiny to every step of the process, every piece of paper submitted, etc. with ultra-extensive backup material to substantiate their validity. Probation would be lifted after one year of squeaky-clean behavior.

Further, applicants and/or providers that are on probation would be required to disclose their probationary status so that all parties are fully aware of what potential pitfalls may befall them. Such disclosure should be prominently made front-and-center as opposed to being buried in fine print.